IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 727 of 1999

(AS PER LEAVE GRANTED I9N CRL.M.C NO. 4581/99 DATED 23/09/99 AGAINST THE ORDER OF ACQUITAL IN JUDGMENT IN CC NO. 349/96 DATED 10/09/89 BEFORE THE COURT OF JUDICIAL MAGISTRATE OF IST CLASS KUNNAMKULAM)

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APPELLANT/COMPLAINANT:

NASEEMA SHAMSUDHIN,
W/O. SHAMSUDHIN,
TESSIL ROAD,
PARAPPAKAVU.

BY ADV. SRI.JOSE K.KOCHUPAPPU
SRI.V.G.SANKARAN

RESPONDENTS/ACCUSED:

1. **MUKESH, PERUNANTH,**
   PUNKUNNAM DESOM,
   THRISSUR TALUK.

2. **STATE OF KERALA,**
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. K.M. FIROZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 727 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal passed by the trial court. Even though notice was ordered as early as on 13.10.1999, no effective steps were taken to serve notice or to cure the defects. When the case was called, there was no representation. Without serving notice on the accused, order of acquittal cannot be reversed. On that point itself, the appeal is liable to be dismissed. Since it is a criminal appeal, I have gone through the merits also.

2. Case of the appellant is that an amount of Rs.55,000/- was handed over on the assurance that accused will make gold ornaments. Since gold ornaments were not handed over, cheque was executed by the accused. The cheque was dishonoured for insufficiency of funds. After complying with the formalities, they approached the court. According to the accused, Ext.P2 cheque was a blank cheque issued by him to the complainant for the purpose of partnership business by name "Cipy Chem Private Limited". Ext.P8 notice itself will show that accused had business of

Gold and the same is known to the complainant. According to PW2, her husband was not well and she was arranging the affairs. She stated that Rs.55,000/- was given as advance for making 39 grams of sovereigns of gold ornaments, but, there is no such averment in Ext.P8 notice. She also stated that she has given two or three sovereigns also to the accused for making gold ornaments. This point is lacking in Ext.P8 as well as in the complaint. According to her, value of the gold handed over was relinquished by her. It is not believed by the trial court. In cross-examination, she admitted that she, along with the accused, started a joint account in State Bank of Travancore, Kunnamkulam for Cipy Chem Private Limited. She further deposed that even though Rs.One lakh was demanded for starting the joint account, that was not paid. She had not taken shares in the firm whereas the accused has deposed as DW1 that for starting the business he had handed over a blank cheque leaf and stamp paper to the complainant and she had misused the same. On the totality of evidence, trial court found that the version of the accused is more probable. Further, PW2 has no case that it is the accused who had written the payee's name in Ext.P2. On the

totality of evidence, since it was found that the cheque was issued not for a legally enforceable debt, I am of the opinion that order of acquittal by the trial court is based on evidence and no grounds are made out by the appellant for interfering in the same.

3. In this connection, I also refer to the decision of the Apex Court in M.S. Narayana Menon @ Mani v. State of Kerala and another (2006 (3) KLT 404).

Appeal is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A. No.727 of 1999

Judgment

14-2-2007